

## Department of the Army, DoD

## § 536.82

(e) If the appellate authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the appellate authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

### **§ 536.80 Payment of costs, settlements, and judgments related to certain medical malpractice claims.**

(a) *General.* Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, therapists, and Red Cross volunteers of the Army Medical Department (AMEDD), AMEDD personnel detailed for service with other than a federal department, agency, or instrumentality and direct contract personnel identified in the contract as federal employees), will be paid provided that:

(1) The alleged negligent or wrongful actions or omissions occurred during the performance of medical, dental, or related health care functions (including clinical studies and investigations) while the medical or health care employee was acting within the scope of employment.

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested.

(3) Such personnel cooperate in the defense of the action on its merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS for action, following the procedures set forth in this subpart.

### **§ 536.81 Payment of costs, settlements, and judgments related to certain legal malpractice claims.**

(a) *General.* Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for personal injury or loss of property caused by any attorney, paralegal, or other member of a legal staff will be paid if:

(1) The alleged negligent or wrongful actions or omissions occurred during the provision or performance of legal services while the attorney or legal employee was acting within the scope of duties or employment;

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested;

(3) Such personnel cooperate in the defense of the action on the merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS, for action, following the procedures set forth in this subpart.

### **§ 536.82 Reopening an MCA claim after final action by a settlement authority.**

(a) *Original approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the MCA upon request of the claimant or the claimant's authorized agent. In the absence of such a request, the settlement authority may on his or her initiative reconsider a claim.

(2) An original approval or settlement authority may reopen and correct action on an MCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If the settlement or approval authority determines that their original action was incorrect, they will modify the action and, if appropriate, make a supplemental payment. The basis for a

change in action will be stated in a memorandum included in the file. For example, a claim was settled for \$15,000, but the settlement agreement was typed to read "\$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative, will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(b) *A successor approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees)—(1) Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an MCA claim upon request of the claimant or the claimant's authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(c) *Time requirement for filing request for reconsideration.* Requests postmarked more than five years from the date of mailing of final notice will be denied based on the doctrine of laches.

(d) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or granting full or partial relief) is final under the provisions of 10 U.S.C. 2735. Action upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

#### **Subpart D—Claims Cognizable Under the Federal Tort Claims Act**

##### **§ 536.83 Statutory authority for the Federal Tort Claims Act.**

The statutory authority for this subpart is the Federal Tort Claims Act

(FTCA) (60 Stat. 842, 28 U.S.C. 2671-2680), as amended by Public Law 89-506, July 1966 (80 Stat. 306); Public Law 93-253, March 1974 (88 Stat. 50); Public Law 97-124, December 1981 (93 Stat. 1666); Public Law 100-694, November 1988 (102 Stat. 4563-67); and Public Law 101-552, November 1996 (104 Stat. 734); and as implemented by the Attorney General's Regulations (28 CFR 14.1-14.11 and its appendix), all of which are posted on the USARCS Web site; for the address see § 536.2(a).

##### **§ 536.84 Scope for claims under the Federal Tort Claims Act.**

(a) *General.* This subpart applies in the United States, its commonwealths, territories and possessions (all herein-after collectively referred to as United States or U.S.). It prescribes the substantive bases and special procedural requirements under the FTCA and the implementing Attorney General's regulations for the administrative settlement of claims against the United States based on death, personal injury, or damage to, or loss of, property caused by negligent or wrongful acts or omissions by the United States or its employees acting within the scope of their employment. If a conflict exists between this part and the Attorney General's regulations, the latter governs.

(b) *Effect of the Military Claims Act.* A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under subpart C of this part if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to non-combat activities. If a claim is filed under both the FTCA and the Military Claims Act (MCA), or when both statutes apply equally, final action thereon will follow the procedures set forth in DA Pam 27-162, paragraphs 2-74 through 2-76, discussing final offers and denial letters.

##### **§ 536.85 Claims payable under the Federal Tort Claims Act.**

(a) Unless otherwise prescribed, claims for death, personal injury, or damage to, or loss of, property (real or personal) are payable under this subpart when the injury or damage is